

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 23, 2006 Session

CROM-CLARK TRUST v. J. PATRICK McDOWELL ET AL.

Appeal from the Circuit Court for Davidson County
No. 05C-209 Barbara N. Haynes, Judge

No. M2005-01097-COA-R3-CV - Filed on September 25, 2006

This appeal involves a dispute regarding a contract to manage real property located in Memphis. After the owner of the property obtained a default judgment against the management company in the Davidson County General Sessions Court, the management company filed a de novo appeal in the Circuit Court for Davidson County. The management company thereafter filed a motion to dismiss the suit. While that motion was pending, the trial court entered an order dismissing the appeal on the ground that the management company had not obtained a trial date in the manner required by Local Rule 20(b). Thereafter, the trial court denied the management company's Tenn. R. Civ. P. 60.02 motion. The management company has appealed. We have determined that the trial court erred by declining to grant the management company relief from the dismissal of its de novo appeal.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Donnie R. McFerren, Memphis, Tennessee, for the appellants, J. Patrick McDowell and JPM Properties, Inc.

Roger Abramson and Kevin H. Sharp, Nashville, Tennessee, for the appellee, Crom-Clark Trust.

OPINION

I.

Crom-Clark Trust owns or controls real property in Memphis. The trust entered into a contract with JPM Properties, a Memphis-based company, to provide property management services for the property. The trust became dissatisfied with JPM Properties' services and, in November 2004, filed a warrant in the Davidson County General Sessions Court against JPM Properties, seeking to recover damages for breach of the property management contract. On January 7, 2005, the general sessions court awarded Crom-Clark a \$14,075 default judgment against JPM Properties.

JPM Properties pursued a de novo appeal to the Circuit Court for Davidson County, and the papers from the general sessions court were filed in the circuit court on January 21, 2005. On March 7, 2005, JPM Properties filed a motion to dismiss Crom-Clark's suit for improper venue and insufficient service of process. On March 28, 2005, before the motion could be heard, the circuit court entered a form order dismissing JPM Properties' appeal and confirming the general sessions court's judgment because JPM had failed to set the case for trial within forty-five days as required by Rule 20(b) of the Local Rules of Practice for the Circuit Court, Chancery Court, Criminal Court and Probate Court of Davidson County ("Local Rule 20(b)").¹

On April 27, 2005, JPM Properties filed a Tenn. R. Civ. P. 60.02 motion seeking relief from the March 28, 2005 order dismissing its appeal. Following a hearing on May 25, 2005, the trial court entered an order on June 9, 2005 denying JPM Properties' motion for post-judgment relief. JPM Properties then perfected this appeal.

II.

JPM Properties raises three issues regarding the application of Local Rule 20(b) to this case.² It asserts first that it complied with the rule by filing its motion to dismiss Crom-Clark's complaint within forty-five days after the case arrived in circuit court. Second, it insists that the local rule violates the Due Process and Equal Protection Clauses of the federal and state constitutions. Finally, it maintains that the trial court erred by denying its motion seeking post-judgment relief under Tenn. R. Civ. P. 60.02. We have determined that Local Rule 20(b) is constitutional and that JPM Properties did not comply with the rule. However, we have also concluded that the filing of JPM Properties' motion to dismiss amounted to substantial compliance with the rule and, therefore, that the trial court erred by failing to grant JPM Properties' Tenn. R. Civ. P. 60.02 motion.

¹Local Rule 20(b) provides:

Once the warrant being appealed is received by and filed with the Circuit Court Clerk, the appellant has the duty to set the appeal for a hearing before a trial judge. The appellant has forty-five (45) days to secure a trial date from the court. This time is counted from the date the Circuit Court Clerk files the appealed warrant. If the appellant fails to secure this order within the 45 day time period, an order will be entered making the judgment of the General Sessions Court the judgment of the Circuit Court with costs taxed to the appellant. At the time the appeal is perfected in the Clerk's office, the clerk shall give the appellant or the appellant's attorney written notice of this rule.

²JPM Properties also undertakes to argue the substantive merits of its motion to dismiss Crom-Clark's complaint. These arguments are premature. The principal issue on this appeal is whether JPM Properties should be given the opportunity to make these arguments.

A.

We turn first to JPM Properties' argument, such as it is, regarding the constitutionality of Local Rule 20(b).³ Dismissals under Local Rule 20(b) are analogous to default judgments under Tenn. R. Civ. P. 55.01 or involuntary dismissals for failure to prosecute under Tenn. R. Civ. P. 41.02(1). Like Tenn. R. Civ. P. 41.02(1) and 55.01, the purpose of Local Rule 20(b) is to assure that cases appealed from the general sessions courts to the circuit courts are tried with dispatch. *Sellers v. Anderson*, No. 01A01-9703-CV-00114, 1997 WL 653914, at *2 (Tenn. Ct. App. Oct. 22, 1997) (No Tenn. R. App. P. 11 application filed). In response to a challenge to the constitutionality of Local Rule 20(b)'s predecessor, this Court concluded that the rule "is a valid exercise of the power of the trial courts to control their dockets." *Bendele v. Powell*, Davidson Cir., 1984 Tenn. App. LEXIS 2667, at *10 (Tenn. Ct. App. Feb. 9, 1984), *perm. app. denied*, (Tenn. June 11, 1984). JPM Properties has presented no authorities or argument requiring us to revisit this question. Thus, we conclude that Local Rule 20(b), on its face, does not violate the Due Process and Equal Protection Clauses of the federal or state constitutions.

B.

JPM Properties' second argument is that it complied with Local Rule 20(b) when its lawyer filed a motion to dismiss Crom-Clark's suit. This argument is without merit because the plain language of Local Rule 20(b) requires persons to "secure a trial date from the court" within forty-five days after the general sessions court papers are filed in the circuit court. The record reflects that the only action taken by the lawyer representing JPM Properties was to file a motion to dismiss Crom-Clark's suit on March 7, 2005 – forty-five days after Crom-Clark's warrant was filed in circuit court. Because JPM Properties did not file a motion to set the case for trial on or before March 7, 2005, the facts do not support its claim that it complied with Local Rule 20(b).

C.

Finally, JPM Properties asserts that the trial court erred by declining to grant relief under Tenn. R. Civ. P. 60.02 based on the facts of this case. While conceding that relief under Tenn. R. Civ. P. 60.02 addresses itself to the trial court's discretion, JPM Properties argues that its lawyer's mistaken belief that the case had already been set for trial and the filing of the motion to dismiss Crom-Clark's suit provided a sound basis for granting it relief from the March 28, 2005 order dismissing its de novo appeal. We agree.

³ JPM Properties' argument regarding the constitutionality of Local Rule 20(b) consists of the following two sentences: "In the case at bar local rule 20(b) would deprive Appellants of their due process of law and equal protection of law. It is a harsh procedural rule which terminates this cause of action before Appellants have their date in Court." This argument does not begin to comply with Tenn. R. App. P. 27 and reflects either a lack of experience or a lack of commitment to the substantive merits of the argument. When the constitutionality of statutes or rules of court are challenged, the courts expect the challenger to present reasoned arguments supported by the facts and the law rather than bare conclusory assertions.

Our system of civil justice favors the just, speedy, and inexpensive determination of every suit on its merits. Tenn. R. Civ. P. 1; *Abbott v. Gateway*, No. M1999-00653-COA-R3-CV, 2000 WL 1038113, at *2 (Tenn. Ct. App. July 28, 2000) (No Tenn. R. App. P. 11 application filed); *Nelson v. Simpson*, 826 S.W.2d 483, 487 (Tenn. Ct. App. 1991). The courts interpret procedural rules, including local rules of court, in ways that enhance, rather than impede, the search of justice and that avoid legal quagmires or traps for the unwitting or unwary. *Doyle v. Frost*, 49 S.W.3d 853, 856 (Tenn. 2001); *Johnson v. Hardin*, 926 S.W.2d 236, 238 (Tenn. 1996); *Pieny v. United Imports, Inc.*, No. M2004-01695-COA-R3-CV, 2005 WL 2140853, at *3 (Tenn. Ct. App. Sept. 6, 2005) (No Tenn. R. App. P. 11 application filed); *May v. Woodlawn Mem'l Park*, No. M2001-02945-COA-R3-CV, 2002 WL 31059223, at *2 (Tenn. Ct. App. Sept. 17, 2002) (No Tenn. R. App. P. 11 application filed). Accordingly, dismissals on procedural grounds, such as the dismissal in this case, run counter to the judicial system's general objective of disposing of cases on the merits. *Henry v. Goins*, 104 S.W.3d 475, 481 (Tenn. 2003); *Tenn. Dep't of Human Servs. v. Barbee*, 689 S.W.2d 863, 866 (Tenn. 1985); *Bowers v. Gutterguard of Tenn., Inc.*, No. M2002-02877-COA-R3-CV, 2003 WL 22994302, at *4 (Tenn. Ct. App. Dec. 17, 2003) (No Tenn. R. App. P. 11 application filed).

Trial courts have broad authority to control their dockets and the procedures in their courts. *Hessmer v. Hessmer*, 138 S.W.3d 901, 904 (Tenn. Ct. App. 2003); *Hodges v. Attorney General*, 43 S.W.3d 918, 921 (Tenn. Ct. App. 2000). They may do so through local rules of practice,⁴ as long as these rules work in harmony with the Tennessee Rules of Civil Procedure. *Hackman v. Harris*, 225 Tenn. 645, 651, 475 S.W.2d 175, 177 (1972); *Kenyon v. Handal*, 122 S.W.3d 743, 752 (Tenn. Ct. App. 2003). While this authority includes the power to dismiss cases sua sponte, the courts should exercise their power sparingly and with great care. *Henry v. Goins*, 104 S.W.3d at 482; *Harris v. Baptist Mem'l Hosp.*, 574 S.W.2d 730, 731 (Tenn. 1978).

Judgments under Local Rule 20(b) dismissing a de novo appeal from the general sessions court, like default judgments or judgments of dismissal for failure to prosecute, are not favored. They are "drastic remedies." *Abbott v. Gateway*, 2000 WL 1038113, at *2; *Nelson v. Application Group, Inc.*, No. 01A01-9703-CV-00137, 1997 WL 706610, at *4 (Tenn. Ct. App. Nov. 14, 1997) (No Tenn. R. App. P. 11 application filed). Accordingly, this court has observed that dismissals under Local Rule 20(b) should generally be reserved for "totally unresponsive parties," *Bowers v. Gutterguard of Tenn., Inc.*, 2003 WL 22994302, at *7.

This court has also recognized that a party whose de novo appeal is dismissed pursuant to Local Rule 20(b) may seek relief from the dismissal pursuant to Tenn. R. Civ. P. 60.02. Even though we give great deference to a trial court's discretionary decision to grant or deny relief pursuant to Tenn. R. Civ. P. 60.02, *Henry v. Goins*, 104 S.W.3d at 479; *McCracken v. Brentwood United Methodist Church*, 958 S.W.2d 792, 795 (Tenn. Ct. App. 1997), we have, on more than one occasion, found that the trial court erred by declining to grant Tenn. R. Civ. P. 60.02 relief from a dismissal of a de novo appeal under Local Rule 20(b). See, e.g., *Pieny v. United Imports, Inc.*, 2005 WL 2140853, at *8; *Bowers v. Gutterguard of Tenn., Inc.*, 2003 WL 22994302, at *9; *May v.*

⁴Trial courts have clear authority to adopt local rules of practice to supplement the Tennessee Rules of Civil Procedure. Tenn. S. Ct. R. 18(a); Tenn. Code Ann. §§ 16-2-511, 16-3-407 (1994).

Woodlawn Mem'l Park, Inc., 2002 WL 31059223, at *4; *Abbott v. Gateway*, 2000 WL 1038113, at *4; *Nelson v. Application Group, Inc.*, 1997 WL 706610, at *4; *Sellers v. Anderson*, 1997 WL 653914, at *3.

This is the first appeal involving Local Rule 20(b) in which the party appealing from general sessions court failed to file a timely motion to set the case for trial but did file a motion to dismiss the underlying complaint within forty-five days after the papers were filed in the trial court. While filing the motion to dismiss does not comply with Local Rule 20(b), the fact that the motion was filed should weigh heavily in determining whether the moving party is entitled to Tenn. R. Civ. P. 60.02 relief from the order dismissing its appeal. The filing of a timely motion to dismiss provides clear evidence (1) that the appealing party is not letting the case languish and (2) that the appealing party believes it has a meritorious defense to the complaint.

Cases that arrive in circuit court on de novo appeals from general sessions court stand on the same footing as cases that were filed originally in circuit court. *Pieny v. United Imports, Inc.*, 2005 WL 2140853, at *4-5; *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000). Because the Tennessee Rules of Civil Procedure governs all cases pending in circuit court, Tenn. R. Civ. P. 1, the parties in a case appealed from a general sessions court to a circuit court have all the procedural rights and remedies available to them that are available to parties in cases that were originally filed in circuit court. *See Ware v. Meharry Med. Coll.*, 898 S.W.2d 181, 185-86 (Tenn. 1995). Therefore, as a general matter, cases appealed from general sessions court should be treated no differently than cases originally filed in circuit court.⁵

The Tennessee Rules of Civil Procedure permit defendants to test the sufficiency of a complaint or to take issue with other jurisdictional or procedural irregularities by filing a Tenn. R. Civ. P. 12 motion to dismiss before they are required to file an answer or to request that the case be set for trial. Thus, JPM Properties was well within its procedural rights when it filed a motion seeking the dismissal of Crom-Clark's suit based on improper venue and insufficient service of process. Since granting its motion would obviate the need for a trial, JPM Properties should not be taken to task for filing this motion before requesting a trial date.

Under the facts of this case, we have concluded that the filing of JPM Properties' motion to dismiss on March 7, 2005 complies with the spirit, if not the letter, of Local Rule 20(b). We have also determined that the record lacks any evidence that JPM Properties itself had nothing to do with the failure to comply with Local Rule 20(b) and that JPM Properties' motion to dismiss reveals that it has meritorious defenses to Crom-Clark's suit. At most, the failure to comply with Local Rule 20(b) in this case was caused by the failure of JPM Properties' lawyer to familiarize himself with the local rules of practice in Davidson County's trial courts, not by any intentional plan to prolong the case. Accordingly, we find that JPM Properties was not a "totally unresponsive party," and,

⁵We specifically disavow the portion of this court's *Bendele v. Powell* decision that states otherwise. We also note that Local Rule 18.01 provides that a case originally filed in circuit court is subject to dismissal for lack of prosecution if it is not set for trial within twelve months after its filing. This period is eight times longer than the forty-five day period provided in Local Rule 20(b).

therefore, that the trial court should have relieved JPM Properties from its failure to comply with Local Rule 20(b).

III.

We reverse the June 9, 2005 order denying JPM Properties' motion for Tenn. R. Civ. P. 60.02 relief and remand the case to the trial court with directions to enter an order granting JPM Properties' motion and setting aside the March 28, 2005 order dismissing its appeal pursuant to Local Rule 20(b). We tax the costs of this appeal in equal proportions to JPM Properties, Inc. and its surety and to Crom-Clark Trust for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.